

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 TOMMIE SLACK,

7 Plaintiff,

8 v.

9 WASHINGTON DEPARTMENT OF  
CORRECTION CARE REVIEW  
10 COMMITTEE, et al.,

11 Defendants.

Case No. C19-5557 BHS-TLF

ORDER DIRECTING PLAINTIFF TO  
IDENTIFY THE OPERATIVE  
COMPLAINT

12 Plaintiff commenced this action by filing of a civil right complaint under 42 U.S.C. §  
13 1983. Dkt. 1. On July 12, 2019, the Court ordered plaintiff to show cause why his complaint  
14 should not be dismissed or file an amended complaint curing the deficiencies in his proposed  
15 complaint. Dkt. 5. The plaintiff subsequently filed a proposed amended complaint to attempt to  
16 cure the deficiencies in his original complaint. Dkt. 6. Plaintiff also filed a proposed summons to  
17 which he attached another complaint purporting to be a continuation of the previous amended  
18 complaint (Dkt. 6). Dkt. 7. On August 30, 2019 plaintiff filed another amended complaint  
19 incorporating the allegations and defendants from the first proposed amended complaint (Dkt. 6)  
20 but not including the allegations made in the proposed summons (Dkt. 7). Dkt. 9.

21 On October 4, 2019 the Court directed the operative complaint (Dkt. 9) to be served on  
22 the named defendants. Dkt. 13. On November 12, 2019 plaintiff filed a “notice” informing the  
23 Court that the amended complaint attached to the summons (Dkt. 7) was not served on the  
24  
25

1 defendants named in that attachment. Dkt. 30. Plaintiff further asks the Court to serve both the  
2 amended complaint attached to the proposed summons (Dkt. 7) and the amended complaint filed  
3 on August 30, 2019 (Dkt. 9).

4       There can only be one operative complaint in a matter and the Court will not allow  
5 combinations of various documents and attachments to make one operative complaint. Further,  
6 when an amended complaint is filed, it operates as a complete substitution for the previously  
7 filed complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Additionally, all  
8 causes of actions that are alleged in a pleading and not alleged in the subsequent amended  
9 pleading are deemed waived. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997),  
10 *overruled in part on other grounds, Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012). It is  
11 unclear from the plaintiff's pleadings which complaint he intends to be the operative complaint.

12       Accordingly, it is hereby ORDERED that:

- 13       (1) Plaintiff file a notice to the Court on or before **December 13, 2019**, identifying  
14 which complaint filed in this action he wishes to pursue as the operative  
15 complaint.
- 16       (2) Alternatively, on or before **December 13, 2019**, plaintiff may file an amended  
17 complaint including all facts, claims and defendants that he is seeking to include  
18 in his amended complaint. Any amended complaint must include all facts, claims  
19 and defendants, and cannot simply incorporate by reference parts of the previous  
20 pleadings. Any amended complaint must comply with LCR 15.
- 21       (3) Any future amended complaints, after the amended complaint authorized in this  
22 order, must comply with the procedures set out in Federal Rule of Civil Procedure  
23 15(a)(2).

**(4) Failure to respond to this order may result in dismissal of the complaint for failure to prosecute and failure to comply with a court order.**

(5) The Clerk is directed to send a copy of this order to plaintiff and defendants.

Dated this 15th day of November, 2019.

Theresa L. Frutke

Theresa L. Fricke  
United States Magistrate Judge